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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,582

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Epke Bosma

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EXAMINER

NGUYEN, SON T

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

10/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,582

Applicant(s)

BOSMA, EPKE

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/22/07 & 11/13/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-7 is/are pending in the application.
- 4a) Of the above claim(s) 8-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. In view of the appeal brief filed on 6/22/07, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Teri P. Luu/
Teri P. Luu
Supervisory Patent Examiner

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-6** are rejected under 35 U.S.C. 102(e) as being anticipated by Nilsson (2004/0168643A1).

For claim 1, Nilsson teaches a method for separating a first quantity of milk (from one teat) drawn from a milking animal in an automatic milking machine and a second quantity of milk (from another teat) drawn from the milking animal in said milking machine, comprising: - milking an animal (with teat cups 4,6,8,10) using said automatic milking machine, - measuring a first indicator of mastitis (by flow sensors 36,38,40,42) during said milking, and in response to said first indicator of mastitis indicating mastitis (see fig. 2, first indicator is the flow reading from flow sensors indicated as ref. 52, once this is confirmed, then the second indicator is performed), a second indicator of mastitis (by the cell counter 21) is performed, said second indicator of mastitis includes: - analyzing at least a part of said first quantity of milk using an on-line cell counter 21 for counting the number of cells in said first quantity of milk, and - operating a valve in dependence on the counted number of cells so that if the counted number of cells is below a first threshold, said first quantity of milk is collected in a first container, and if said counted number of cells is equal to or above said first threshold, said first quantity of milk is directed to a drain or a second container (see [0015]).

For claim 2, Nilsson teaches wherein the step of operating a valve further comprises the step of - collecting said first quantity of milk in a third container if the counted number of cells are above a third threshold but below said first threshold and collect said first quantity of milk in said first container if said counted number of cells are

below said third threshold, thereby collecting milk of a first superior quality in said first container, milk of a second quality in said third container and milk of a third quality is directed to said drain or collected in said second container. See [0015] where Nilsson teaches multiple tank 28 with multiple compartments 30,32.

For claim 3, Nilsson teaches wherein said first indicator of mastitis is one indicator, or a selection of multiple indicators, selected from a group of indicators comprising: the conductivity of said first quantity of milk, the NAgase value of said first quantity of milk, the Urea value of said first quantity of milk, the temperature of said first quantity of milk, the milk flow from said milking animal or the milk quantity from a teat of said milking animal. Nilsson teaches the flow sensors 36,38,40,42 and the cell counter 21.

For claim 5, Nilsson teaches wherein said first quantity of milk drawn from one milking animal is collected in an end unit for the duration of performing the somatic cell count. See [0014] thru [0021].

For claim 6, Nilsson teaches wherein said first quantity of milk is collected from a first teat of a milking animal and said second quantity of milk is collected from a second teat of said milking animal. See [0018] thru [0021].

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Nilsson as applied to claim 1 above, and further in view of Birk (SE 200000179A on form PTO-1449).

Nilsson is silent about wherein said first quantity of milk is collected from a first milking animal and said second quantity of milk is collected from a second milking animal.

Birk teaches a method for separating a first quantity of milk drawn from a milking animal in an automatic milking machine and a second quantity of milk drawn from the milking animal in said milking machine comprising milking an animal using said automatic milking machine, wherein said first quantity of milk is collected from a first milking animal and said second quantity of milk is collected from a second milking animal (page 4, lines 17-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first quantity of milk be collected from a first milking animal and said second quantity of milk be collected from a second milking animal as taught by Birk in the method of Nilsson in order to save time and cost by having the total milk from all animals be analyzed for mastitis and not just one animal only. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

Response to Arguments

6. Applicant's arguments with respect to claims 1-3,5-7 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). Note that finality is necessitated because Applicant filed amendment with added limitations in the response filed 11/13/06 to overcome the Birk reference.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Son T Nguyen
Primary Examiner
AU 3643